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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,923	01/05/2004	Kevin B. Pintar	PINK102	9638

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EXAMINER
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NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/753,923	<b>Applicant(s)</b> PINTAR, KEVIN B.	
	<b>Examiner</b> Jared W. Newton	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,6-8,11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8,11 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 10, 2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 8 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

*In regard to claims 1 and 4*, the positive recitation(s) below render the above claims indefinite:

- “the butt portion of the firearm positionable in and supportable by the butt support member” in lines 4-5 of claim 1;
- “the trigger guard of the firearm” in line 4 of claim 4.

In particular, applicant functionally sets forth the firearm and its elements in lines 1-2 of claim 1 through the recitation “for holding a firearm including a stock, a trigger guard and a barrel, the stock including a butt portion” and then applicant

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improperly seeks to link the functionally recited structure of the firearm and its elements to the positive structure of the gun rack. Thus, the metes and bounds of the claims cannot be properly ascertained since one would not know whether a firearm and its elements are being positively claimed.

The claimed invention should be defined by the elements that comprise the rack itself, and should not rely on its relationship to a gun stored thereon, as if said gun were a positive element of the invention. However, functional relationships to the gun, in order to provide a clearer understanding of the rack itself, are proper if the functional recitation of the gun is maintained throughout the claim. For example, claim 1 should set forth the relationship between the rack and the gun similar to the following:

--A gun rack for holding a firearm including a stock, a trigger guard and a barrel, the stock including a butt portion, the gun rack comprising:  
a stock support assembly including a butt support member for supporting and positioning the butt of a firearm; etc.--

*In regard to claims 1, 4, and 8, the positive recitation(s) below render the above claims indefinite:*

- “the lock pivotable” in line 16 of claim 1;
- “the pin portion of the lock securable through the aperture...” in lines 3-4 of claim 4;
- “the lock” in line 4 of claim 8.

In particular, applicant functionally sets forth the lock and its elements in lines 8-9 of claim 1 through the recitation “adapted to permit insertion of a pin portion of a lock through the aperture” and then applicant improperly seeks to link the functionally recited structure of the lock and pin to the positive structure of the gun rack. Thus, the metes and bounds of the claims cannot be properly ascertained since one would not know whether a lock and pin are being positively claimed.

*For reasons similar to those set forth above, the following positive recitation(s) below render claim 11 indefinite:*

- “the butt portion of the firearm positionable...” in line 11 of claim 11;
- “the lock securable...” in line 20 of claim 11;
- “the lock pivotable...” in line 24 of claim 11.

To overcome the 112 2<sup>nd</sup> Paragraph rejection of claim 11 with respect to the “lock” recitation, the word “the” in line 20 should be changed to --a--.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 4, 6, 7, 8, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 321,920 to Wunderlick in view of US Patent No. 4,113,107 to Jaeger.

Wunderlick discloses a gun rack comprising a stock support assembly *G* having pivoted curved seat *g* adapted to receive the butt portion of a gun; further comprising a barrel support assembly *T* comprising a claw *H* adapted to grasp the outer perimeter or

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the gun nozzle (see FIG. 1) Wunderlick further discloses vertical side stock support members *g'* connected to and extending from said butt support member (see FIG. 3). Wunderlick further discloses a lower mounting bracket *C*, wherein the stock support member *G* is pivotally mounted to said lower bracket *C* and pivotable about an axis of rotation; and an upper mounting bracket *B*, wherein the barrel claw *H* is pivotally mounted to said upper bracket *B* and pivotable about the axis of rotation (see FIG. 1). Wunderlick further discloses a barrel gripping claw assembly analogous to a clip, wherein a clip is defined as a device for gripping or clasping. Wunderlick recites, "The arm *T* of bracket *B* has a pivoted or hinged piece or claw, *H*, for grasping the nozzle of the gun..." (see Line 48). Wunderlick further discloses first and second vertical stock support members *g'* extending from the butt support member *g*, said stock support members aligned in a parallel orientation to each other (see FIGs. 1 and 3). Wunderlick recites, "The bracket *C* is provide with the arm *G*, having pivoted curved seat *g*, with side and end projections *g'*, in which the stock of the gun in placed" (see Line 45). Wunderlick further discloses the upper and lower mounting brackets with respective support members attached pivotally thereto, as advanced above (see paragraph 8). Wunderlick discloses a rack including all of the limitations of claim 11, further comprising a clip as set forth in the claim 6 rejection above (see paragraph 9).

Wunderlick does not disclose the abovementioned first and second side stock support members including respective first and second apertures adapted to permit the insertion of a pin portion of a lock therethrough.

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Jaeger discloses a gun rack comprising: a butt support member 12; and first and second side stock support members comprising columns 22,24 and braces 26,28, wherein said stock support members have aligned apertures 62 for receiving a the pin portion 64 of a locking member 80 (see FIGS. 4 and 6).

The Wunderlick and Jaeger references are analogous art because they are from the same field of endeavor—firearm storage assemblies. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the upward extending stock support members and the locking pin and member as disclosed by Jaeger within the rack as disclosed by Wunderlick, by attaching the upward extending columns 22,24 (Jaeger) to the existing stock support members g' (Wunderlick), and positioning the brace members 26,28 (Jaeger) so that the apertures 62 (Jaeger) align with a the trigger guard of the gun stored in the rack (Wunderlick), and the locking pin member 64 (Jaeger) extends therethrough. The motivation would have been to provide a locking means to the rack as disclosed by Wunderlick. Wunderlick discloses a novel and convenient rack for storing a firearm, but fails to disclose a means for securing the firearm from unwanted removal, such as by a child. Jaeger discloses a simple means for selectively securing a firearm, or group of firearms to a rack, in order to allow removal by only the possessor of the lock's key. It follows that it would successful and obvious to provide the locking means disclosed by Jaeger to the rack as disclosed by Wunderlick, in order to make the rack safer from unwanted removal or theft—a motivation advanced by Jaeger.

In regard to claim 4, the Examiner takes Official Notice that it would have been obvious to construct the apertures disclosed by Jaeger of any shape, including a circle, oval, or triangle, as long as the aperture is capable of receiving the locking pin for locking firearms within the rack. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The court held that the shape of a container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant. See MPEP 2144.04.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent No. 5,791,499 to Zebbedies
- US Patent No. 2,998,885 to Surface
- US Patent No. 6,206,261 to McCrary
- US Patent No. 4,579,263 to Ehmke et al.
- US Patent No. 3,007,581 to Moore

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jared W. Newton  
July 13, 2006  
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